

**IN THE SUPREME COURT OF THE STATE OF WASHINGTON**

In re

Samuel Campbell Marsh

Bar No. 43756

Supreme Court No. 201,657-0

SUPPLEMENTAL  
DECLARATION OF  
DISCIPLINARY COUNSEL  
IN SUPPORT OF ODC'S  
PETITION FOR INTERIM  
SUSPENSION

The undersigned Disciplinary Counsel of the Office of  
Disciplinary Counsel (ODC) of the Washington State Bar Association  
declares:

1. I am over the age of eighteen years and competent to testify.

I make the statements in this declaration from personal knowledge and  
from my review of the records of the Office of Disciplinary Counsel.

2. On July 5, 2017, in Formal Proceeding No. 14#00087,  
Hearing Officer Bradley Duncan entered his Findings of Fact, Conclusions  
of Law and Recommendation (FFCL) for disbarment. A true and correct  
copy of the FFCL is attached to this declaration as Exhibit A. Respondent  
has not appealed the FFCL.

3. On August 2, 2017, a hearing was held in Formal Proceeding No. 15#00082. Respondent did not appear for the hearing. The Hearing Officer has not yet issued Findings of Fact, Conclusions of Law and Recommendations

4. On June 21, 2017, ODC received another grievance against Respondent, filed by former clients. In the June 2017 grievance, the former clients allege that they hired Respondent to file an appeal of a decision denying their asylum application with the Board of Immigration Appeals. The former clients allege that, in September 2016, they paid Respondent \$1,250 and agreed to make further monthly payments, but Respondent stopped communicating with them. Respondent did not file a brief or statement and their appeal was summarily dismissed in February 2017.

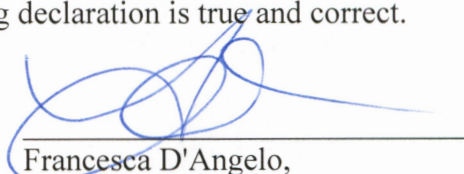
5. In the June 2017 grievance, on May 18, 2017, the former clients allege that they were told by an ICE officer that they had 30 days to leave the country. On May 13, 2017, the former clients paid Respondent an additional \$2,300. The former clients allege that after they paid him these funds, Respondent would not answer their calls unless they called from an unknown number, and would not return messages. After they hired another attorney, Respondent refused to provide the file. A true and correct copy of this grievance has been filed separately from this declaration as Exhibit B with a request that this document be filed under

seal because it is not yet a public document.

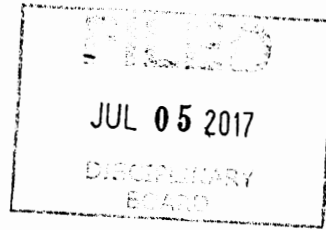
6. Respondent did not respond to the June 2017 grievance. A 10-day letter sent to Respondent on July 27, 2017 at his address of record with the Association was returned by the USPS as "refused."

The undersigned declares under penalty of perjury under the laws of the state of Washington that the foregoing declaration is true and correct.

August 18, 2017 Seattle  
Date and Place

  
\_\_\_\_\_  
Francesca D'Angelo,  
Bar No. 22979  
Disciplinary Counsel  
1325 4th Avenue – Suite 600  
Seattle, WA 98101-2539  
(206) 727-8294

## **EXHIBIT A**



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**BEFORE THE  
DISCIPLINARY BOARD  
OF THE  
WASHINGTON STATE BAR ASSOCIATION**

**In re**

**SAMUEL CAMPBELL MARSH**

**Lawyer (WSBA No. 43756)**

**Proceeding No. 14#00087**

**FINDINGS AND RECOMMENDATIONS**

The final disciplinary hearing in this matter was held on May 23, 2017, at the offices of the Washington State Bar Association. The hearing took place pursuant to Rule 10.13 of the Rules for Enforcement of Lawyer Conduct (the "ELCs").

Francesca D'Angelo, Esquire, represented the Office of Disciplinary Counsel (the "ODC"). The Respondent, Mr. Marsh, who had proceeded *pro se* throughout the matter, did not appear at the hearing. The Hearing Officer's Order Denying Request for Continuance, entered on May 25, 2017, describes the events that occurred immediately prior to the hearing. Other orders entered in this matter describe the continuances and delays that have afflicted this proceeding from the outset. The facts described in those orders, and particularly those outlined in the Order entered on May 25, cause the Hearing Officer to conclude, for purposes of ELC 10.13(b), that Mr. Marsh was given ample and proper notice of the hearing and that he

1 failed to attend the hearing without good cause. This failure gives rise to the consequences  
2 described in ELC 10.13(b)(1) and (2).<sup>1</sup>

3 For purposes of the hearing, the ODC bears the burden of offering substantial evidence  
4 to support factual propositions, and of establishing acts of misconduct by a clear preponderance  
5 of the evidence. Substantial evidence is evidence sufficient "to persuade a fair-minded, rational  
6 person of the truth of a declared premise," while the clear preponderance standard "requires  
7 more proof than simple preponderance, but less than beyond a reasonable doubt." *In re*  
8 *Marshall*, 160 Wn.2d 317, 330 (2007). In formulating these findings and recommendations, the  
9 Hearing Officer has evaluated the evidence and the allegations with these standards in mind.

#### 10 ALLEGATIONS CONTAINED IN COMPLAINT

11 By Order dated December 12, 2014, the Review Committee of the Disciplinary Board of  
12 the Washington State Bar Association directed that a public hearing be held in response to  
13 certain allegations made against Mr. Marsh. The ODC filed the Formal Complaint in this  
14 matter on February 3, 2015. The Formal Complaint alleged generally that Mr. Marsh, a sole  
15 practitioner specializing in immigration law, had undertaken to represent an individual by the  
16 name of Jose Hernandez from late 2012 through early 2013 in connection with Mr. Hernandez's  
17 apprehension and potential deportation to Mexico following an arrest in Oregon on drug  
18 charges.<sup>2</sup> The Formal Complaint alleges at Count 1 that Mr. Marsh failed to satisfy the  
19 standards of competence and diligence imposed by Rules 1.1 and 1.3 of the Rules of  
20 Professional Conduct (the "RPCs") in his handling of Mr. Hernandez's affairs. At Count 2, the

21 \_\_\_\_\_  
22 <sup>1</sup> Rather than recount the findings contained in the Order entered on May 25 in detail here, the Hearing  
Officer will consider those findings to be incorporated into this Decision by reference.

23 <sup>2</sup> The Formal Complaint, along with certain of the exhibits introduced into evidence at the hearing, refer  
24 to Mr. Hernandez as "Hernandez-Orozco." Other exhibits, however, refer to him only as "Hernandez,"  
and the witnesses used that name, rather than "Hernandez-Orozco." This Decision will refer to him as  
"Hernandez."

1 Formal Complaint alleges that Mr. Marsh knowingly submitted to Immigration and Customs  
2 Enforcement ("ICE") and to the United States Immigration Court documents to which  
3 Mr. Hernandez's signature had been forged, in violation of RPCs 3.3(a) (knowing misstatements  
4 to a tribunal), 4.1(a) (false statements to a third person), 8.4(b) (criminal act reflecting adversely  
5 on lawyer's fitness), 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation)  
6 and/or 8.4(i) (moral turpitude or corruption reflecting disregard for rule of law). Mr. Marsh's  
7 Answer, dated April 16, 2015, admits the general contours of his attorney-client relationship  
8 with Mr. Hernández and the procedural history with ICE and the Immigration Court, but, as to  
9 allegations of misconduct, either denies them or asserts a privilege against self-incrimination.

10 By way of remedy, the Formal Complaint identified the "possible dispositions" as  
11 "disciplinary action, probation, restitution, and assessment of the costs and expenses of these  
12 proceedings." In its Hearing Brief and at the hearing, the ODC specifically recommended that  
13 Mr. Marsh be disbarred. Mr. Marsh did not submit prehearing briefing on the merits, and, as  
14 noted above, did not appear at the hearing itself.

### 15 **FINDINGS OF FACT**

16 At the hearing, the ODC offered live testimony from Amy Hernandez, Jose Hernandez  
17 and Erica Schommer (via Skype) and a declaration from Timothy P. Nishimura. Based upon  
18 this testimony and the exhibits admitted into evidence during the course of the hearing, the  
19 Hearing Officer finds the following as fact:

20 1. Samuel Marsh was admitted to the practice of law in Washington on June 3,  
21 2011. At all relevant times, Mr. Marsh specialized in immigration law, maintaining offices in  
22 Chehalis, Washington, and, for a time, Del Mar, California.

1           2.     In approximately September of 2012, Mr. Hernandez was arrested and jailed in  
2 Douglas County, Oregon, on drug possession charges. Because Mr. Hernandez, who was born  
3 in Mexico and had come to the United States as a child, previously had been deported but had  
4 returned to the United States, his arrest on drug charges resulted in an "immigration hold" being  
5 placed against him while in local custody in Oregon. The effect of this hold was to ensure that  
6 once his criminal charges were resolved and he was released from local custody, he would be  
7 transferred immediately to ICE custody, where, it was presumed, a process for his removal to  
8 Mexico would begin.

9           3.     Recognizing this, Mr. Hernandez's then-girlfriend, Amy Anderson  
10 (Ms. Anderson and Mr. Hernandez were married in October of 2012, after which she became  
11 known as Amy Hernandez) began to search for immigration counsel. At some point in  
12 September of 2012, Ms. Hernandez located Mr. Marsh through an advertisement Mr. Marsh had  
13 placed on Craigslist. In November of 2012, after one or more no-charge consultations,  
14 Mr. Marsh and Ms. Hernandez (acting on behalf of Mr. Hernandez, who was still incarcerated  
15 on the drug charges) entered into a retainer agreement (Exhibit A-6) pursuant to which  
16 Mr. Marsh charged a flat fee of \$5,000 for his services. Ms. Hernandez made an initial payment  
17 of \$1,200 at the time the retainer agreement was signed, and later made two monthly payments  
18 of \$300, for a total fee payment to Mr. Marsh of \$1,800.

19           4.     Before and at the time he was engaged, Mr. Marsh told Ms. Hernandez that it  
20 was important he be engaged quickly so that he could request Mr. Hernandez's immigration file  
21 and begin work. Though Ms. Hernandez requested confirmation from Mr. Marsh several times  
22 during the representation (which ended in February of 2013) that Mr. Marsh had, in fact,  
23 requested Mr. Hernandez's immigration records (via, among other methods, a Freedom of  
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1 Information Act ("FOIA") request), there is no indication that he ever did so. Just before  
2 terminating the engagement, Ms. Hernandez asked Mr. Marsh by text message if he had "the  
3 foia for Jose yet," and, if so, whether he could "e-mail or fax" a copy to her. His reply was  
4 "nope." (Exhibit A-53).<sup>3</sup>

5 5. On January 2, 2013, Mr. Hernandez pleaded no contest to drug possession in  
6 Douglas County, Oregon, and was sentenced to time served. ICE took possession of  
7 Mr. Hernandez immediately thereafter and transferred him to the Northwest Detention Center in  
8 Tacoma, Washington (the "NDC"), where he arrived on January 5, 2013.

9 6. On January 7, 2013, Ms. Hernandez asked Mr. Marsh by text about the status of  
10 the filing of both a G-28 form (notice of appearance of attorney) and Mr. Marsh's planned  
11 motions to stay Mr. Hernandez's deportation and to reopen his immigration case.<sup>4</sup> (Exhibit A-1,  
12 p. 2) Following up on January 8, Ms. Hernandez asked Mr. Marsh if "Jose need[s] to sign any  
13 of it?" (*Id.*, p. 3) In response to Mr. Marsh's suggestion that Ms. Hernandez should actually file  
14 the materials herself with the Immigration Court at the NDC in Tacoma (using forms he would  
15 fax to her), Ms. Hernandez expressed concern about whether the Immigration Court would  
16 accept faxed, rather than original, materials. Mr. Marsh responded that Ms. Hernandez should  
17 "just make sure it doesn't show the fax info on the top or bottom of the page or white it out and  
18 recopy. Trace over my signature if necessary." (*Id.*) Later that day, and despite what he earlier

19  
20 <sup>3</sup> Erica Schommer, an experienced immigration law practitioner who is now a clinical assistant professor  
21 at the St. Mary's University School of Law in San Antonio, Texas (and who succeeded Mr. Marsh as  
22 Mr. Hernandez's attorney in 2013), testified that FOIA requests for client files are often among the first  
23 steps taken in a representation of this type, and that these requests require a client signature. Though  
24 Mr. Marsh told Ms. Hernandez by text on January 26, 2013 that he "did a FOIA request" (Exhibit A-1 at  
p. 5), there is no evidence that Mr. Marsh ever asked Mr. Hernandez to sign a FOIA request or ever sent  
materials to Ms. Hernandez or Mr. Hernandez for that purpose, and a copy of an actual FOIA request was  
not included in the record.

<sup>4</sup> The evidence established that text message exchanges were an important, and perhaps the primary,  
method by which Ms. Hernandez and Mr. Marsh communicated during the course of the engagement.

1 had told Ms. Hernandez, Mr. Marsh concluded that the documents would need to be filed with  
2 the Immigration Court "in LA," rather than with the Immigration Court in Tacoma. He told  
3 Mr. Hernandez that he would file the materials himself in Los Angeles, provided Ms.  
4 Hernandez immediately deposit \$60 into his bank account to cover fuel expense for the trip  
5 (from his office in Del Mar to Los Angeles), which Ms. Hernandez did (though she actually  
6 deposited \$100). (*Id.*)

7         7. Mr. Marsh personally filed the materials with the Immigration Court in Los  
8 Angeles on January 9, 2013. Mr. Marsh then faxed a copy of certain of the filed materials to the  
9 ICE Officer handling Mr. Hernandez's matter, Officer Renner, that afternoon. (Exhibits A-23,  
10 A-24 and A-26) These materials consisted of a G-28 form (notice of appearance and consent by  
11 petitioner), an I-246 form (application for stay), a Fee Waiver Request, and motions to stay  
12 deportation and to reopen Mr. Hernandez's immigration case. Each of the G-28, the I-246 and  
13 the Fee Waiver Request carries what purports to be the signature of Jose Hernandez. The  
14 signatures on the I-246 and the Fee Waiver Request documents are submitted under penalty of  
15 perjury.<sup>5</sup>

16         8. The evidence that Mr. Hernandez did not sign any of these documents is  
17 compelling. Ms. Hernandez testified that, despite asking Mr. Marsh if "Jose need[ed] to sign"  
18 the documents, Mr. Marsh did not provide copies of these documents (blank or otherwise) to her  
19 before he filed them with the Immigration Court in Los Angeles, and faxed them to ICE Officer

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21 <sup>5</sup> In this regard, it was pointed out during the hearing that the I-246 form purportedly signed by  
22 Mr. Hernandez includes a representation that he had not been "arrested by police or other law enforcement  
23 agency." (Exhibit A-18) This is not true, as Mr. Hernandez had been arrested at least three times, and had  
24 come into custody in this matter as a result of a police arrest. As for the Fee Waiver Request, it indicates  
that Mr. Hernandez had no cash or financial assistance available to him and no household expenses, though  
Mr. Hernandez testified that his family typically provided \$20 to \$40 to him every two weeks while in  
custody, and that he actually did have household expenses with Ms. Hernandez, to whom he had become  
married by the time the document was filed.

1 Renner, on January 9, 2013. Ms. Hernandez testified that she saw these materials for the first  
2 time on January 14, 2013, as part of a package of materials Mr. Marsh sent by regular mail to  
3 her home (copies of the signature-bearing documents included in the package sent to  
4 Ms. Hernandez are at Exhibits A-17, A-18 and A-19). At the time, she did not review them  
5 closely, and apparently did not notice that they contained what purported to be her husband's  
6 signatures. Mr. Hernandez testified that he never met Mr. Marsh in person, spoke to him only  
7 once, briefly, by telephone (as discussed below), that he did not sign the G-28, the I-246 or the  
8 Fee Waiver Request included at Exhibits A-17, A-18 and A-19, and collected at Exhibit A-26,  
9 and that he did not recognize the signatures. In a Declaration dated March 1, 2014 (Exhibit  
10 A-61), Timothy P. Nishimura, a Forensic Document Examiner retained by the Washington State  
11 Bar Association, opined that, based upon a comparison with certain of Mr. Hernandez's known  
12 genuine signatures, the signatures attributed to Mr. Hernandez on the G-28, the I-246 and the  
13 Fee Waiver Request are "non-genuine, i.e. not written by Jose M. Hernandez-Orozco." (*Id.* at  
14 ¶ 7) There is no contrary evidence in the record to support the proposition that Mr. Hernandez  
15 did, in fact, sign any of these materials.

16 9. In light of the foregoing, the Hearing Officer finds that the signatures attributed  
17 to Mr. Hernandez on the G-28, the I-246 and the Fee Waiver Requests are not, in fact,  
18 Mr. Hernandez's signatures. At some point, Mr. Marsh either signed the documents himself or  
19 procured a signature for the documents from some other person who was not Mr. Hernandez.  
20 Then, on January 9, 2013, without informing Ms. Hernandez or Mr. Hernandez that a signature  
21 that was not Mr. Hernandez's had been affixed to the documents, and without providing to them  
22 pre-filing drafts or copies, Mr. Marsh knowingly caused the documents to be filed with the  
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1 Immigration Court in Los Angeles and to be delivered by facsimile to Mr. Hernandez's ICE  
2 Officer.

3 10. The Immigration Court denied the Request for Stay on January 9, 2013, the same  
4 day it was filed. Though it is not clear when Mr. Marsh himself learned of this, he informed  
5 Ms. Hernandez of the denial on January 16, 2013.

6 11. On January 23, 2013, the Department of Homeland Security filed an Opposition  
7 to the Motion to Reopen that Mr. Marsh had filed for Mr. Hernandez on January 9, 2013.  
8 (Exhibit A-35) Mr. Marsh did not send Ms. Hernandez a copy of that Opposition. On  
9 January 24, 2013, the Immigration Judge issued an opinion denying Mr. Hernandez's Motion to  
10 Reopen, noting that the Motion did not include the required I-589 form (application for asylum)  
11 or any evidence supporting the Motion's claim that he and members of his family had been  
12 subjected to threats and harassment. Evidence of this sort – and particularly, given the Motion's  
13 reliance upon Mr. Hernandez's purported right to asylum, the I-589 form – was necessary to  
14 bring the Motion within an exception to what otherwise was the time limitation for such filings  
15 imposed by applicable regulations. (Exhibit A-37) Mr. Marsh did not send a copy of this  
16 opinion to Ms. Hernandez or Mr. Hernandez. Two weeks later, on February 7, 2013,  
17 Ms. Hernandez asked Mr. Marsh by text whether he had "heard anything back from the la court  
18 for the motion to reopen." (Exhibit A-1 at p. 7) Mr. Marsh apparently did not respond to this  
19 question and there is no evidence that he ever informed Ms. Hernandez that the Motion to  
20 Reopen actually had been denied on January 24, 2013.

21 12. Ms. Schommer testified that Mr. Marsh's Motion to Reopen was "deficient in  
22 essentially every single way," that it "[a]bsolutely [did] not" meet the standards of minimal  
23 competence for an immigration lawyer and that it was "so deficient that . . . it's a great example  
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1 of ineffective assistance of counsel.” According to Ms. Schommer, whose testimony the  
2 Hearing Officer found to be quite knowledgeable and credible, it is both procedurally and  
3 substantively essential that a motion to reopen an immigration case in this context – which is to  
4 say, one filed long after the removal order had been entered, and which relied upon an asylum  
5 request as a basis for relief from the 90-day time bar for such motions – include an I-589 asylum  
6 request form supported by substantial evidence of changed circumstances in the country of  
7 origin. Ms. Schommer testified that the development of this evidentiary support typically  
8 requires meetings with the client to develop individualized factual presentations, which are then  
9 submitted along with current information about conditions in the country at issue.  
10 Ms. Schommer alluded in her testimony to the I-589 materials she later submitted as  
11 Mr. Hernandez’s successor counsel in connection with a successful motion to withhold removal.  
12 (Exhibit A-59) These materials are comprehensive and include a substantial amount of  
13 information about Mr. Hernandez and his background. Ms. Schommer also testified that a  
14 detainee typically may file only a single motion to reopen an immigration case, so it is  
15 important that care be taken in the preparation of the evidence and arguments to support the  
16 motion, lest the opportunity be wasted.

17 13. Mr. Marsh never met with Mr. Hernandez<sup>6</sup> and failed to support the Motion to  
18 Reopen filed on January 9, 2013 with any I-589 materials at all. Instead, despite  
19 Ms. Schommer’s testimony that I-589 asylum materials must *accompany* a motion to reopen (a  
20 perspective confirmed by the Immigration Judge’s opinion of January 24, 2013), Mr. Marsh’s  
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22 <sup>6</sup> Ms. Schommer testified that it was a simple matter for an attorney to meet with a client at the NDC  
23 during this period; an attorney needed only to place a phone call to the facility 15-20 minutes before arrival  
24 and efforts would be made to have the client available at the facility’s meeting center. Ms. Schommer  
testified that clients were available for meetings seven days a week, from approximately 7:00 a.m. to  
6:00 p.m.

1 Motion to Reopen said only that Mr. Hernandez “*would like to be allowed to submit an I-589*  
2 based on ‘religion’ and ‘social group membership,’ as well as ‘political’ party membership.”  
3 (Exhibit A-24 at ¶ 12) (emphasis added) The evidence suggests, and the Hearing Officer finds,  
4 that Mr. Marsh’s handling of Mr. Hernandez’s Motion to Reopen was procedurally and  
5 substantively inadequate and fell below the standard of competence to be expected of a  
6 practitioner in this area.

7 14. At some point prior to the filings on January 9, 2013, Mr. Marsh had also  
8 suggested to Ms. Hernandez that he would file a motion seeking a bond as a method of  
9 preventing Mr. Hernandez’s removal. After Mr. Hernandez’s motion for stay was denied,  
10 Ms. Hernandez began to revisit with Mr. Marsh the idea of moving for a bond, though she  
11 expressed to Mr. Marsh some concerns about Mr. Hernandez’s eligibility for this relief in light  
12 of his prior drug charges and the length of his detention at NDC. (Exhibit A-36) Mr. Marsh  
13 apparently did not respond directly to these substantive questions, though in response to  
14 Ms. Hernandez’s email of January 26, 2013, in which she again asked about the merits of a  
15 bond motion in light of the drug issue, Mr. Marsh responded “I don’t get why you would ask the  
16 first one [regarding the bond] . . . who cares, I’m not gonna not do the bond hearing just because  
17 might say no, shit they could say no without the drug charges.” (Exhibit A-40) Ms. Hernandez  
18 had raised concerns about the merits of a bond motion because of what Mr. Hernandez and  
19 others had told her.<sup>7</sup> But Ms. Hernandez testified that because her and her husband’s “hired

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22 <sup>7</sup> Mr. Hernandez testified that it widely understood among those in custody that if a detainee had been  
23 apprehended on drug charges, the detainee would not be eligible for a bond until the detainee had been in  
24 custody for at least six months. Ms. Hernandez testified that Mr. Hernandez had passed this information  
on to her, and that this is why she raised the question with Mr. Marsh. Ms. Schommer’s testimony  
confirmed that the view of the law on this point held by those in custody with Mr. Hernandez was, in fact,  
correct.

1 representation," who she presumed was "competent and knowing," believed that a bond motion  
2 stood some chance of success, they moved forward with Mr. Marsh's recommendation.

3 15. Based upon the presumption that a bond motion had merit, and based upon  
4 advice from Mr. Marsh, Ms. Hernandez undertook to obtain letters of recommendation for  
5 Mr. Hernandez from friends, family and former employers to support the motion. Ms. Marsh  
6 testified that she devoted "a lot" of time to this effort, and ultimately obtained 15 or more  
7 letters.

8 16. By text messages dated January 28 and January 30, 2013, Ms. Hernandez pressed  
9 Mr. Marsh on whether he had obtained a "court date" for a bond hearing and how she should  
10 expect the letters of recommendation to be submitted. Mr. Marsh responded on January 30 to  
11 the effect that he was "sorry," but "had all day just wasted yesterday on court car repairs and  
12 laundry." (Exhibit A-41) On January 31, Mr. Marsh told Ms. Hernandez by text that he was  
13 "getting the bond out today," in response to which Ms. Hernandez asked him to let her know  
14 once the date was set and again asked for guidance on submitting the letters of recommendation.  
15 (*Id.*) Mr. Marsh filed a motion for a bond hearing that day. (Exhibit A-42) At some point  
16 thereafter, a bond hearing for Mr. Hernandez was set for February 11, 2013, though the record  
17 is not clear about precisely when notice of that date was given to Mr. Marsh.

18 17. On a separate but related topic, on February 6, 2013, Mr. Hernandez called  
19 Ms. Hernandez from the NDC to tell her that he had just been called for a "credible fear"  
20 interview. Ms. Hernandez texted this information to Mr. Marsh with a request that he talk to  
21 Mr. Hernandez immediately and that Mr. Marsh participate by telephone in the interview itself,  
22 which was to occur later that day. (Exhibit A-45) Mr. Marsh responded "[y]eah . . . tell them to  
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1 | call me.” (*Id.*) Ms. Schommer testified that it is quite customary for lawyers to participate in  
2 | credible or reasonable fear interviews by telephone.

3 |       18.     Mr. Hernandez called Mr. Marsh immediately after this exchange and requested  
4 | guidance prior to the interview. Mr. Hernandez testified that, after answering the phone,  
5 | Mr. Marsh immediately “jumped into” a “bogus story” that he recommended Mr. Hernandez tell  
6 | the interviewer about his father being “kidnapped,” which Mr. Hernandez considered to be  
7 | untrue (though Mr. Hernandez testified that couldn’t remember all of the specifics of the  
8 | “bogus” story). The conversation lasted between 30 seconds and one minute; Mr. Hernandez  
9 | testified that he simply listened to Mr. Marsh’s recommendation, then concluded the call by  
10 | telling Mr. Marsh that he would contact him “when it was over.” The interview itself took place  
11 | later that day and lasted between 60 and 90 minutes. Mr. Hernandez did not follow Mr. Marsh’s  
12 | recommendation that he use the “bogus” story during the interview. Mr. Marsh did not  
13 | participate in the interview, though the record is not clear whether an effort to reach Mr. Marsh  
14 | during the interview was made. Mr. Hernandez’s reasonable fear request was denied following  
15 | the interview.

16 |       19.     As the bond hearing set for February 11, 2013, neared, Ms. Hernandez became  
17 | increasingly concerned that Mr. Marsh had not filed the appropriate paperwork and that the  
18 | Immigration Court would not have sufficient time to review the materials (including  
19 | Mr. Hernandez’s letters of recommendation) prior to the hearing. She expressed those concerns  
20 | to Mr. Marsh in a series of texts on February 7 and 8. (Exhibits A-47 and A-49) Her concern  
21 | intensified when, on the morning of February 8 (a Friday), Mr. Marsh texted her that the filings  
22 | “might have to wait till Monday,” the date of the hearing, because “I won’t have time this  
23 | morning [sic].” (Exhibit A-49) When Ms. Hernandez expressed her frustration at this,  
24 |



1 Mr. Marsh texted "I'm sorry, I've got 60 cases I'm working on and 4 bond hearings that start in  
2 an hour." He then suggested that he would "take 10 caffeine pills and try n get it done asap . . .  
3 I've already been up all night / as it is." He then admonished Ms. Hernandez to "keep your  
4 texts, emails etc to the point . . . I can't spend 2 hours a day reading all this." Following this, he  
5 suggested that Ms. Hernandez "[j]ust take a step back, relax, maybe smoke a J, everything will  
6 be cool." (Exhibit 49) Ms. Hernandez was "enraged" that Mr. Marsh would communicate with  
7 her in this way.

8         20. Ms. Hernandez had taken February 8 off from work at Mr. Marsh's suggestion,  
9 with the understanding that she would need to physically file the "bond paperwork" that day at  
10 the NDC for Mr. Marsh. When she learned that Mr. Marsh would not be completing the bond-  
11 related pleadings on February 8, she chose to travel from Vancouver to Tacoma anyway in the  
12 hope of filing the letters of recommendation, so that the Immigration Court would have at least  
13 those materials (albeit without the pleadings they were intended to support) prior to the hearing.  
14 When she arrived, however, she was unable to file the letters of recommendation, and testified  
15 that "they basically laughed at me and said that they couldn't believe that a lawyer had actually  
16 directed me to go up there and submit that paperwork." When Ms. Hernandez reported this to  
17 Mr. Marsh by text, he replied that "[t]heir [sic] fucking stupid . . . it doesn't have to be me."  
18 (Exhibit A-49)

19         21. On the morning of February 11, 2013, a Monday, Ms. Hernandez traveled to  
20 Tacoma again, this time to attend the bond hearing. She texted Mr. Marsh at 7:45 a.m., asking  
21 for information about the time and courtroom, but Mr. Marsh did not provide that information.  
22 After she located the courtroom, the matter was called, but Mr. Marsh was not present and did  
23 not participate by telephone. Recognizing that no supporting materials had been filed,  
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1 Mr. Marsh not having appeared, and bearing in mind Mr. Hernandez's concern about his  
2 eligibility for bond relief in any event, Ms. Hernandez and Mr. Hernandez asked the  
3 Immigration Court to cancel the hearing, which it did. After being informed that the  
4 Immigration Court would not simply reset the matter for a new date, Ms. Hernandez returned to  
5 Vancouver. Ms. Hernandez had once again taken the day off from work, without pay, which for  
6 her at that time was \$13 per hour.

7 22. When she arrived home, she found that Mr. Marsh had sent an email to her  
8 earlier that morning to which was attached draft bond pleadings. Mr. Marsh's covering email  
9 indicated that Ms. Hernandez would need to "put a few details" into the documents, then "sign  
10 [Mr. Marsh's] name on each of these." (Exhibit A-49A) Ms. Hernandez understood that  
11 Mr. Marsh had sent the draft bond pleadings to her that morning (the morning of the hearing  
12 itself, and while she was actually traveling from Vancouver to Tacoma to attend it) with the  
13 expectation that she would somehow complete the documents' factual discussions, correct the  
14 several errors Ms. Hernandez testified they contained, *sign Mr. Marsh's name to them*, and file  
15 them for use at the hearing itself. Again, the hearing was set to take place that very morning at  
16 the NDC, and when it was called, Mr. Marsh did not attend or attempt to participate by  
17 telephone.

18 23. In fact, as testified to by Ms. Schommer, the entire bond motion exercise was a  
19 waste of time, as Mr. Hernandez was unquestionably ineligible for bond relief at that point.  
20 According to Ms. Schommer, Mr. Hernandez was ineligible because the then-controlling case  
21 law in the Ninth Circuit – case law that, according to Ms. Schommer, would have been known  
22 to any reasonably competent immigration practitioner in this jurisdiction – rendered detainees  
23 who had come into ICE custody following a drug conviction (as Mr. Hernandez had) ineligible  
24

1 for bond relief until they had been in mandatory ICE custody for least six months (which, in  
2 February of 2013, Mr. Hernandez had not). Because of this, Ms. Schommer characterized the  
3 chance of success on the bond motion recommended by Mr. Marsh as being "[z]ero." The  
4 reason for this – the legal impediment to the motion's success – is the same one Mr. Hernandez  
5 himself had learned of from other detainees at the NDC, and about which Ms. Hernandez  
6 repeatedly asked Mr. Marsh during January of 2013.

7       24. The evidence suggests, and the Hearing Officer finds, that Mr. Marsh's handling  
8 of all matters pertaining to the bond motion – from the fact that Mr. Hernandez was ineligible  
9 for the relief as a matter of law; to the way he failed to keep his clients apprised of  
10 developments; to the way he deferred filings until they were too late while asking his clients to  
11 complete his work then sign his name to it; then not appearing at the hearing on the bond  
12 motion itself – was procedurally and substantively inadequate and fell below the standard of  
13 competence and care to be expected of a practitioner in this or any other area of law. More  
14 broadly, Ms. Schommer testified that, apart from the G-28 form (which was necessary to obtain  
15 access to Mr. Hernandez's records, but which as filed by Mr. Marsh carried a signature that was  
16 not Mr. Hernandez's) none of the pleadings or other materials actually filed or prepared by  
17 Mr. Marsh during his representation were appropriate or necessary, and the Hearing Officer  
18 finds this as fact.<sup>8</sup>

19       25. Shortly after the bond hearing episode, Ms. Hernandez and Mr. Hernandez  
20 decided to terminate Mr. Marsh's engagement. By letter dated February 17, 2013,  
21

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22 <sup>8</sup> Ms. Schommer testified that, apart from requesting Mr. Hernandez's records (something facilitated by  
23 the G-28), the only thing needed to forestall deportation was for a detainee to express a fear of return and  
24 a request for an asylum officer, which in turn would lead to a reasonable fear interview (which  
Mr. Hernandez did). Ms. Schommer testified that the other filings – the emergency stay, the motion to  
reopen, the bond request – were not only incompetently prepared but were substantively unnecessary.

1 Ms. Hernandez notified Mr. Marsh of the termination and asked him to deliver Mr. Hernandez's  
2 files and a detailed billing statement to their home address. (Exhibit A-54) Ms. Hernandez sent  
3 the letter to Mr. Marsh by email on February 18, and both informed him that she would be  
4 submitting a complaint to the Washington State Bar and requested a refund from Mr. Marsh of  
5 the fees he had been paid. (Exhibit A-55) Later that day, Mr. Marsh told Ms. Hernandez by text  
6 that the "withdrawal" was "a breach of contract." He then told Ms. Hernandez that "I just wish  
7 you would stop harassing me and interfering with the damn case and let me do my job!", that  
8 "I've never had a client be such a pest and constantly message me to death till I met u," and that  
9 "[y]ou treated me like your slave." (Exhibit A-56) Notwithstanding Mr. Marsh's remarks, the  
10 Hearing Officer finds as a matter of fact that Ms. Hernandez's and Mr. Hernandez's requests for  
11 information, guidance, status and advice throughout this matter were entirely reasonable, and,  
12 given Mr. Marsh's conduct, patient and measured.

13       26.     On March 22, 2013, Ms. Hernandez notified Mr. Marsh by email that she had  
14 initiated a grievance (attached to the email) and that she would be seeking a refund of the fees  
15 paid to Mr. Marsh. (Exhibit A-57A) Mr. Marsh did not respond directly to this  
16 communication, and the certified copy of the document that Ms. Hernandez sent to Mr. Marsh's  
17 California address was returned as undeliverable. When Ms. Hernandez contacted Mr. Marsh  
18 about the address, he declined to give it to her and told her that he would not be available to  
19 discuss the matter or receive mail for several weeks.

20       27.     At some point soon thereafter (the precise date is not contained in the records,  
21 though Ms. Hernandez thought it likely in late March or early April of 2013), Ms. Hernandez  
22 received a phone call at work from a member of the Vancouver police department, who reported  
23 that Mr. Marsh had accused Ms. Hernandez of "harassing" and "threatening" him. At  
24

1 approximately the same time, Ms. Hernandez's employer (Portland Plastics) informed her that  
2 Mr. Marsh had contacted it to report that Ms. Hernandez had been using the company's  
3 equipment to harass and threaten him, and that Mr. Marsh had threatened suit against the  
4 company itself. While the police report came to nothing after Ms. Hernandez explained the  
5 situation (and after a police representative apparently spoke again to Mr. Marsh),  
6 Ms. Hernandez's employer suspended her without pay for three days while it investigated  
7 Mr. Marsh's allegations, during which time Ms. Hernandez feared that she would lose her job  
8 (though she did not). The communication between Ms. Hernandez and Mr. Marsh regarding his  
9 mailing address was the last direct communication she or her husband had with Mr. Marsh, and  
10 Mr. Marsh has not refunded any of the fees paid to him in connection with the engagement.  
11 Both Mr. Hernandez and Ms. Hernandez testified that they never threatened or harassed  
12 Mr. Marsh.

13 28. In an email to the Hearing Officer dated April 21, 2017, Mr. Marsh indicated that  
14 he would be objecting to Ms. Hernandez's and Mr. Hernandez's presence at the formal hearing  
15 "due to the criminal history of violence (including multiple gun charges and prior gang  
16 activities)." Mr. Marsh indicated that he "has already sought a protective order anyways, so it  
17 would be a violation for them to be within the location as Respondent." A copy of this email is  
18 attached to this Decision as Exhibit A. Mr. Marsh never filed a motion on this topic, and there  
19 is no evidence in the record that either Ms. Hernandez or Mr. Hernandez have a violent criminal  
20 history, have ever been the subject of "gun charges" or have been engaged in "prior gang  
21 activities." Despite his representations to the Hearing Officer in this email, there is no evidence  
22 that Mr. Marsh sought, much less obtained, a "protective order" that Ms. Hernandez or  
23 Mr. Hernandez would violate if "within the same location as Respondent." In fact,  
24

1 Mr. Hernandez testified that he spoke to Mr. Marsh only once (on February 6, 2013, the day of  
2 his reasonable fear interview, and not since), that he has never seen Mr. Marsh and would not  
3 recognize him, and that he has never threatened Mr. Marsh. Had Mr. Marsh attended the  
4 hearing, the Hearing Officer would have asked Mr. Marsh about the allegations contained in  
5 this email, but, because Mr. Marsh did not attend, the Hearing Officer draws adverse inferences  
6 in keeping with ELC 10.13(b)(1), and finds that the allegations in the email were not true when  
7 Mr. Marsh made them.

8         29. In fact, the Hearing Officer found both Ms. Hernandez and Mr. Hernandez to be  
9 extremely credible witnesses and credits as true every element of their testimony relevant to the  
10 allegations in this matter. Ms. Hernandez, in particular, kept complete records, possessed an  
11 organized and precise understanding of the facts and was able to recount events, including the  
12 specifics of her interactions with Mr. Marsh, in a clear and credible way. Mr. Hernandez's  
13 direct interactions with Mr. Marsh were far more limited, but he also was able to describe the  
14 relevant events in a clear and credible way. As noted above, Ms. Schommer presented as a  
15 capable and experienced practitioner with a sound understanding of both the substantive and  
16 practical aspects of the practice of immigration law in this setting. The Hearing Officer credits  
17 as true her testimony as relevant to the allegations in this matter. Once again, Mr. Marsh,  
18 without good cause, did not attend the hearing despite notice. As a result, as permitted by  
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1 ELC 10.13(b)(1), the Hearing Officer generally has drawn adverse inferences as to the questions  
2 that might have been asked of Mr. Marsh at the hearing, had he attended.<sup>9</sup>

3 30. Facts that mitigate in Mr. Marsh's favor are the absence of any prior disciplinary  
4 record in Washington; the absence of any evidence that Mr. Marsh engaged in misconduct for a  
5 selfish motive or to advance his own pecuniary interests; and the fact that, at the time the  
6 misconduct occurred, Mr. Marsh had been practicing law in Washington for less than two years  
7 (there was no evidence in the record about whether Mr. Marsh may have practiced elsewhere  
8 before being admitted to the Washington bar in 2011).

9 31. Aggravating factors include the following: the fact that Mr. Marsh's neglect and  
10 lack of competence pervaded the entirety of the client relationship here, and was not limited to a  
11 single event or omission; the fact that Mr. Marsh continued the representation despite delays  
12 and failures to timely perform services that he actually attributed to a busy case load and other  
13 personal issues (which suggests a dishonest or selfish motive); the fact that Mr. Marsh  
14 recommended to Mr. Hernandez that he tell the interviewer a "bogus story" at the latter's  
15 credible fear interview; that, in addition to submitting forged documents to a tribunal on  
16 January 9, 2013, Mr. Marsh directed Ms. Hernandez to essentially write significant portions of  
17 the bond brief he forwarded to her for completion on February 11, 2013 (the morning of the  
18 hearing to which the brief related, a hearing that Mr. Marsh then failed to attend), then  
19

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20 <sup>9</sup> As noted above, in his Answer, Mr. Marsh on several occasions invoked his privilege against self-  
21 incrimination in response to particular allegations of misconduct, including the allegation that he or  
22 someone acting under his control forged Mr. Hernandez's signature to the materials filed with the  
23 Immigration Court on January 9, 2013. While the Hearing Officer would be entitled to draw an adverse  
24 inference from Mr. Marsh's invocation of the privilege in this proceeding (*see, e.g. King v. Olympic Pipeline Co.*, 104 Wn. App. 338, 355-56 (*citing Ikeda v. Curtis*, 43 Wn.2d 449, 458 (1953)), *review denied* 143 Wn.2d 1012 (2001)), he has not done so. The only adverse inference the Hearing Officer has drawn derives from ELC 10.13(b)(1), and arises from Mr. Marsh's failure to appear at all to respond to any of the allegations made against him or to answer questions about them.

1 suggested she sign his name to it and file it; the fact that Mr. Marsh contacted both the  
2 Vancouver police department and Ms. Hernandez's employer to complain of "harrassment" and  
3 "threats" after Ms. Hernandez notified him that he had been terminated, requested a refund and  
4 indicated that she would be reporting his conduct to the WSBA (an act seems to have been  
5 intended to intimidate Ms. Hernandez into not pressing those matters); and Mr. Marsh's attitude  
6 generally toward these disciplinary proceedings, which included derisive accusations toward the  
7 ODC and the process, a failure to adhere to deadlines and orders, deceptive communications  
8 and repeated requests for continuances based upon progressively less credible claims of  
9 sickness or medical necessity (as recounted in the many orders entered in this proceeding).

#### 10 CONCLUSIONS OF LAW

11 Based upon the foregoing findings of fact, the Hearing Officer reaches the following  
12 conclusions of law, each of which the Hearing Officer finds by a clear preponderance of the  
13 evidence:

14 32. Count 1 of the Complaint alleges that Mr. Marsh violated RPCs 1.1 and 1.3.  
15 RPC 1.1 imposes upon a lawyer a duty "provide competent representation to a client," and  
16 requires a lawyer to provide "the legal knowledge, skill, thoroughness and preparation  
17 reasonably necessary for the representation." RPC requires a lawyer to "act with reasonable  
18 diligence and promptness in representing a client."

19 33. Mr. Marsh's handling of the Hernandez engagement violated the standards  
20 imposed by both RPC 1.1 and 1.3. Mr. Marsh pressed litigation strategies that were either  
21 unnecessary and/or bore little or no chance of success. The work product he generated in doing  
22 so, including the materials submitted on January 9, 2013, and the draft materials he sent to  
23 Ms. Hernandez for filing on the morning of February 11, 2013, were manifestly deficient. They  
24



1 included inauthentic signatures of his clients, inaccurate information and obvious technical  
2 defects (in the case of the January 9 filings) and were inaccurate, untimely, incomplete and  
3 involved improper requests that a client sign pleadings on a lawyer's behalf (in the case of the  
4 February 11 materials). Several of these issues, but not all of them, appear to have been a  
5 function of Mr. Marsh's having deferred until the last minute (or beyond) the type of fact  
6 gathering necessary to generate competent, factually-supported pleadings, as well as his failure  
7 actually to meet with his client in person. All of this, together with Mr. Marsh's suggestion that  
8 Mr. Hernandez offer a "bogus" story during the latter's "reasonable fear" interview on  
9 February 6, establish that Mr. Marsh's representation of Mr. Hernandez was rife with violations  
10 of RPC 1.1 and 1.3.

11       34.     There is no evidence that Marsh's representation of Mr. Hernandez conferred any  
12 value upon the client. Moreover, in the course of violating RPC 1.1 and 1.3, Mr. Marsh caused  
13 Ms. Hernandez to take at least two full days from work (February 8 and 11) to support filings  
14 and to attend hearings that never actually took because of Mr. Marsh's delays and that would  
15 have been legally futile had they been filed or taken place.

16       35.     Count 2 alleges that, by submitting forged documents to the Immigration Court  
17 on January 9, 2013, Mr. Marsh violated RCW 9A.60.020 (the crime of forgery) and/or engaged  
18 in misconduct within the scope of RPC 3.3(a) (knowing misrepresentation to a tribunal), 4.1(c)  
19 (knowing misstatement of material fact to third person), 8.4(b) (criminal act suggesting  
20 untrustworthiness), 8.4(c) (dishonesty, fraud, deceit or misrepresentation) and/or 8.4(i) (moral  
21 turpitude or corruption reflecting disregard for rule of law).

22       36.     While Mr. Marsh personally filed forged documents with the Immigration Court  
23 on January 9, the evidence does not establish that he did so in violation of RCW 9A.60.020, and  
24

1 thereby breached RPC 8.4(b). To commit the specific crime of forgery under Washington's  
2 statute, the actor must act with "intent to injure or defraud." The record does not establish that  
3 Mr. Marsh intended with his filing of forged documents actually to injure his client or the court,  
4 or to defraud the client or the court so as to produce a result he would not have been able to  
5 achieve with documents containing Mr. Hernandez's genuine signature. Mr. Marsh's state of  
6 mind is critical to a finding of intent in this context, and the clear preponderance of the evidence  
7 does not establish the requisite intent under the statute, and thus under RPC 8.4(b).

8       37. At the same time, there is no question but that Mr. Marsh's submission of the  
9 forged documents involved the knowing making of a false statement of fact and the submission  
10 of false evidence to the Immigration Court and to ICE Officer Renner – specifically, the false  
11 statement to both that Mr. Hernandez had signed the documents and had sworn (in the case of  
12 the I-246 and Fee Waiver Request) to the truth of their contents, which Mr. Marsh understood  
13 the Immigration Court and ICE would rely upon as evidence of Mr. Hernandez's intentions and  
14 circumstance in his immigration case. This act violated RPC 3.3(a)(1) and (4), and RPC 4.1(a).  
15 The significance of the violation is heightened by the fact that both the I-246 and the Fee  
16 Waiver Request contain material factual inaccuracies. That from Mr. Marsh's perspective the  
17 fixing of an inauthentic client signature to these materials may have been intended to expedite  
18 the processing of routine, administrative materials (which is a matter of surmise, given that  
19 Mr. Marsh did not appear at the hearing to offer an explanation) does not excuse the conduct or  
20 avert a violation of RPC 3.3(a)(1) and (4), and RPC 4.1(a).

21       38. This conduct also violates RPC 8.4(c), in that it involves dishonesty, deceit and  
22 misrepresentation, and reflects a disregard for the rule of law. Mr. Marsh knowingly submitted  
23 to the Immigration Court and to ICE documents that he knew his client had not signed and that  
24

1 | neither his client nor Ms. Hernandez had reviewed, and to which a non-genuine signature had  
2 | been affixed. This was dishonest and deceitful as to both his client and those to whom the  
3 | documents were directed, and reflects a disregard both for court rules and the self-evident  
4 | proposition that a document that purports to bind a person, particularly under penalty of perjury  
5 | as to its contents, actually should be reviewed and signed by that person. Again, that Mr. Marsh  
6 | may have intended the submission of these materials as something like a shortcut (giving him  
7 | the benefit of the doubt for these purposes) does not alter the conclusion that RPC 8.4(c) has  
8 | been violated.

9 |         39.     The Hearing Officer does not find, however, that Mr. Marsh's conduct violated  
10 | RPC 8.4(i), in that it does not rise to the level of "moral turpitude" of the type considered in  
11 | matters like *In re Day*, 162 Wn.2d 527 (2008) (and the term seems inherently ambiguous in any  
12 | event), nor does it involve corruption or the commission of an assault.

### 13 |                     **SANCTION ANALYSIS AND RECOMMENDATIONS**

14 |         40.     The Hearing Officer is to determine a presumptive sanction for each ethical  
15 | violation using the American Bar Association's *Standards for Imposing Lawyer Sanctions*  
16 | (1991 ed. & Feb. 1992 Supp.) ("ABA Standards"). The presumptive sanction is determined,  
17 | first, by considering (1) the ethical duty violated; (2) the lawyer's mental state; and (3) the  
18 | extent of actual or potential harm caused by the misconduct; and, second, by taking mitigating  
19 | or aggravating factors into account.

20 |         41.     **COUNT 1:** As noted, Mr. Marsh's conduct violated RPC 1.1 and 1.3.  
21 | Mr. Marsh did not testify, but the evidence failed to establish that he acted with a particularly  
22 | malign motive during the course of his representation of Mr. Hernandez, or with a desire  
23 | actually to injure his client. Rather, for purposes of RPC 1.1 and 1.3, what emerges is a picture  
24 |

1 of a relatively young and inexperienced attorney who had a very poor grasp of the substance of  
2 the matters he was handling and a limited sense of how a lawyer should, and is obligated to,  
3 engage professionally with a client. Moreover, he seemed not to have the support structure in  
4 place to handle what he claimed was an expanding caseload, which, it seems, caused him to cut  
5 inappropriate corners in his management of the logistics of the Hernandez representation. This  
6 is far from ideal, and is deserving of sanction, though it can perhaps be mitigated by  
7 Mr. Marsh's apparent inexperience and lack of prior disciplinary history. This pull toward  
8 mitigation, however, is overshadowed by, among other things, Mr. Marsh's conduct once the  
9 engagement was terminated – his apparent attempt to intimidate his clients by contacting both  
10 the Vancouver police and Ms. Hernandez's employer to accuse her of harassing and threatening  
11 him is a strongly aggravating factor, as was his conduct during the course of this disciplinary  
12 proceeding, which was by turns dismissive, derisive, deceptive and evasive (as catalogued in the  
13 many orders entered in this proceeding). The harm to Mr. Hernandez and Ms. Hernandez was  
14 both actual and potential – among other things, Mr. Marsh caused them, Ms. Hernandez in  
15 particular, to expend significant amounts of time in futile pursuits based upon misguided advice;  
16 exposed Mr. Hernandez to potentially adverse consequences flowing from the fixing of a forged  
17 signature to filed documents; and caused Ms. Hernandez to lose a total five days paid work, two  
18 associated with useless trips to the NDC and three resulting from her suspension from  
19 employment as a result of Mr. Marsh's calls to her employer.


20 42. The ABA Standards most obviously applicable to Mr. Marsh's conduct are 4.4,  
21 4.5, 4.6 and 5.1. Balancing the aggravating and mitigating factors, and finding that the  
22 aggravating factors outweigh mitigating factors, the Hearing Officer concludes that suspension  
23 is the appropriate sanction for the conduct alleged and established in Count One, and for that  
24

1 reason recommends that Mr. Marsh be suspended from the practice of law in Washington for  
2 one year.

3       43.     **Count 2:** As noted, the Hearing Officer has found that Mr. Marsh submitted  
4 documents containing a forged client signature to a tribunal and to an immigration officer on  
5 January 9, 2013, in violation of several provisions of the RPC. The ABA Standards most  
6 directly applicable to this conduct are 5.11 and 6.11, both of which authorize disbarment. While  
7 Mr. Marsh did not appear to testify about his mental state, it seems impossible that he did not  
8 understand and know that he was submitting to a tribunal documents that his client had not  
9 signed or reviewed, and that this was a clear violation of all applicable standards of conduct.  
10 While the record does not indicate that Mr. Hernandez himself suffered actual injury, the  
11 potential injury to him was significant given the inaccuracy of certain items to which the forged  
12 signatures were sworn under penalty of perjury. Moreover, the submission of forged documents  
13 strikes at the heart of the integrity of the legal system and the public's confidence in it, and  
14 constitutes substantial actual and potential injury to both. The Washington Supreme Court has  
15 identified disbarment as the presumptive sanction for the submission of a forged document to a  
16 tribunal, subject to the evaluation of aggravating and mitigating factors. Under this analysis, the  
17 Hearing Officer finds the mitigating factors in this case actually to be less compelling than in *In*  
18 *re Rodriguez*, 177 Wn.2d 872 (2013), and, bearing in mind the aggravating factors, sees no  
19 basis for a departure from the presumption outlined in *Rodriguez* and in other Supreme Court  
20 precedent. *See, e.g. In re Guarnero*, 152 Wn.2d 51 (2004). For this reason, the Hearing Officer  
21 recommends the sanction of disbarment in response to the violations described in Count 2 of the  
22 Complaint.

44. **Restitution:** In addition to the foregoing, the Hearing Officer recommends and orders that Mr. Marsh pay to Mr. Hernandez and Ms. Hernandez restitution in the amount of \$2,420.00. This figure consists of \$1,800 in fees paid to Mr. Marsh, \$100 in advanced expenses (for Mr. Marsh's trip to Los Angeles on January 9, 2013, to file the forged documents), and \$520 in salary (or five eight-hour days at \$13 per hour) that Ms. Hernandez lost as a result of Mr. Marsh's behavior – February 8 and 11, 2013, when Ms. Hernandez made unnecessary trips from Vancouver to Tacoma in connection with the bond matter, and three subsequent work days for which Ms. Hernandez was suspended as a result of Mr. Marsh's baseless claim to her employer that she had used its equipment to harass and threaten her.

DATED this 5<sup>th</sup> day of July, 2017.

  
Bradley R. Duncan  
Hearing Officer

## CERTIFICATE OF SERVICE

I certify that I caused a copy of the Finality & Re commendation  
to be delivered to the Office of Disciplinary Counsel and to be mailed  
to Samuel Walsh Respondent/Respondent's Counsel  
at 1113 S North Blvd #444 Detroit, MI 48202 Certified/first class mail  
postage prepaid on the 5th day of July, 2017

~~Clerk/Counsel to the Disciplinary Board~~

# **Exhibit A**

**From:** Samuel Marsh <samuel@marshimmigrationlawyer.com>  
**Date:** Friday, April 21, 2017 at 1:36 PM  
**To:** Francesca D'Angelo <Francescad@wsba.org>, "Bradley R. Duncan" <bradley.duncan@hcmp.com>  
**Cc:** Allison Sato <Allisons@wsba.org>  
**Subject:** RE: Witnesses at Marsh Hearing

Respondent will be objecting to having Amy and Jose Hernandez testifying as witnesses, due to the criminal history of violence (including multiple gun charges and prior gang activity) it places the Respondent, and everyone else at risk for that matter, to have them at the hearing. Respondent has already sought a protective order anyways, so it would be a violation for them to be within the same location as Respondent.

----- Original Message -----

**Subject:** RE: Witnesses at Marsh Hearing  
**From:** "Francesca D'Angelo" <Francescad@wsba.org>  
**Date:** 4/21/17 12:02 pm  
**To:** "Bradley R. Duncan" <bradley.duncan@hcmp.com>  
**Cc:** "Samuel Marsh" <samuel@marshimmigrationlawyer.com>, "Allison Sato" <Allisons@wsba.org>

Dear Mr. Duncan:

We anticipate presenting Erica Schommer's testimony by Skype. Amy and Jose Hernandez and Timothy Nishimura will be testifying in person.

Sincerely,



Francesca D'Angelo | Disciplinary Counsel | Office of Disciplinary Counsel

Washington State Bar Association | ☎ 206.727.8294 | [francescad@wsba.org](mailto:francescad@wsba.org)



1325 Fourth Avenue, Suite 600 | Seattle, WA 98101-2539 | [www.wsba.org](http://www.wsba.org)

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---

**From:** Bradley R. Duncan [mailto:[bradley.duncan@hcmp.com](mailto:bradley.duncan@hcmp.com)]  
**Sent:** Friday, April 21, 2017 11:56 AM  
**To:** Francesca D'Angelo  
**Cc:** Samuel Marsh; Allison Sato  
**Subject:** Witnesses at Marsh Hearing

Ms. D'Angelo-

In the Final Witness List served and filed on March 6, the ODC identified four witnesses, including two experts. Do you presently expect each of those witnesses to testify, and do you expect each to attend the hearing in person?

Thank you.

Bradley R. Duncan

Hillis Clark Martin & Peterson P.S.

999 Third Avenue | Suite 4600 | Seattle, WA 98104

d: 206.470.7625 | 206.623.1745 | f: 206.623.7789

[bradley.duncan@hcmp.com](mailto:bradley.duncan@hcmp.com) | [www.hcmp.com](http://www.hcmp.com) | vCard

# WASHINGTON STATE BAR ASSOCIATION

August 18, 2017 - 10:21 AM

## Transmittal Information

**Filed with Court:** Supreme Court  
**Appellate Court Case Number:** 201,657-0  
**Appellate Court Case Title:** In re: Samuel Campbell Marsh, Attorney at Law (WSBA #43756)

### The following documents have been uploaded:

- 2016570\_Affidavit\_Declaration\_20170818101354SC438724\_1780.pdf  
This File Contains:  
Affidavit/Declaration - Disciplinary Counsel  
*The Original File Name was Supplemental Declaration of DC in Support of Petition for Interim Suspension.PDF*
- 2016570\_Exhibit\_20170818101354SC438724\_3658.pdf  
This File Contains:  
Exhibit  
*The Original File Name was EX B to be filed under seal.PDF*
- 2016570\_Letters\_Memos\_20170818101354SC438724\_8813.pdf  
This File Contains:  
Letters/Memos - Other  
*The Original File Name was Cover Letter to Supreme Court.PDF*

### A copy of the uploaded files will be sent to:

- allisons@wsba.org
- francescad@wsba.org
- samuel@marshimmigrationlawyer.com

### Comments:

Exhibit B to be filed under seal.

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Sender Name: Carol Kinn - Email: carolk@wsba.org  
Address:  
1325 4th Avenue  
Suite 600  
Seattle, WA, 98101  
Phone: (206) 727-8291

**Note: The Filing Id is 20170818101354SC438724**